263

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1993/1
14 June 1993

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eleventh session
19-30 July 1993
Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from Governments

Introduction

1. By its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. The Sub-Commission, in its resolution 1992/33 of 27 August 1992, requested the Secretary-General to transmit the report of the Working Group on its tenth session (E/CN.4/Sub.2/1992/33) to Governments for written comments and suggestions for the completion of the second reading of the text of the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1992/33, annex I) at the eleventh session of the Working Group. The Commission on Human Rights endorsed this request in its resolution 1993/31 of 5 March 1993. In accordance with these resolutions, appropriate communications were sent to Governments. The present document contains replies received as of 3 June 1993. Further replies, if any, will be included in addenda to this document.

FINLAND

[Original: English]
[24 May 1993]

1. General comments

1. The Government of Finland emphasizes that the declaration on the rights of indigenous peoples, when achieved, will be a very long-expected and important document on human rights. It is desirable that this urgent declaration, defining the minimum standards for the survival and the well-being of the indigenous peoples, will be approved by the Working Group this year, which is proclaimed the International Year for the World's Indigenous People.

2. The Government of Finland refers to its earlier comments on the draft declaration, more especially to the comment from last year (see E/CN.4/Sub.2/AC.4/1992/1). As regards the details of the draft, the Government of Finland states the following.

2. Specific comments

Preamble

3. It is believed to be the correct solution not to include a definition of the concept of indigenous peoples in the declaration, because it would lead to difficult problems concerning the criteria, borderline cases, subjective vs. objective criteria etc. What could be thought of, however, is the possibility of including in the preamable some reference to certain basic characteristics of all or most indigenous peoples: their historical background, their relationship with the natural environment, etc.

4. The tenth preambular paragraph is of relevance to Finland. The northernmost part of the country, inhabited and used by the Samis, has importance in terms of military strategy. A potential conflict between military authorities and the Sami reindeer herders has already developed concerning the Litmuorvaara radar station. The use of jet planes, operating at very low altitude in military exercises, causes great concern among the Samis, as it is believed to disturb the reindeer and their breeding.

5. The tenth preambular paragraph gives reason to reconsider the use of and, in particular, the decision-making on the use of Sami areas in Finnish Lapland for military purposes and exercises.

Part I

6. Operative paragraph 1. The right to self-determination of indigenous peoples certainly is one of the crucial issues decisive for the outcome of the drafting process. While the Finnish Government has no definite objection to the present formulation, broader acceptance might be achieved through elaborating on the final words of the paragraph ("the right to autonomy and

self-government"). The presentation of various examples of autonomy and self-government (regional, cultural etc) could achieve a broader approval of the draft.

7. Operative paragraph 2. The Universal Declaration of Human Rights could be mentioned.

8. Operative paragraph 3. A more general prohibition of discrimination, following, for example, the lines of article 26 of the International Covenant on Civil and Political Rights, could be considered. It is maybe not unambiguous enough to prohibit any discrimination "based on (their) indigenous identity" if no general prohibition of discrimination on other grounds is inserted.

Part II

9. Operative paragraph 8. The list of examples of "cultural identity and traditions" leaves open the role of various forms of traditional economic life, based on a close relationship with the natural environment. In the case of the Samis, reindeer herding, especially, and also hunting and fishing, constitute essential parts of their cultural identity and traditions. Irrespective of the separate mention in operative paragraph 21, this connection should be mentioned here also.

10. Operative paragraph 13. The right to the use of and access to all forms of mass media has been formulated in such a way that it cannot be understood to refer to State-owned media only. Especially the second sentence, referring to active State measures, gives the paragraph relevance in relation to privately-owned media, as well. This approach is fully acceptable in terms of international human rights law and freedom of expression, as the "effective measures" referred to might include a wide range of various legislative, administrative, economic and other measures.

Part III

11. Operative paragraph 16. The article on land rights is quite far-reaching, even in comparison with article 14 of ILO Convention No. 169, in which a distinction is made between lands traditionally occupied by indigenous peoples and lands "not exclusively occupied by them". A similar approach might be advisable in order to cope with the wide range of existing situations.

12. Operative paragraph 17. The article on restitution of or compensation for previously owned lands is very important and provides for various practical solutions in the existing different situations.

13. Operative paragraph 18. The specific attention given to the protection of the environment is commendable. Specifically concerning military activities, see the comment on the preamble (paras. 4 and 5 above).

Part IV

14. Operative paragraph 22. Under positive State measures, the possibility of granting certain economic rights only to persons belonging to an indigenous people, in order to secure the future of their culture and way of life, should be included. Especially in the present time of international economic integration, it is important to establish a rule of international law that preferential treatment for indigenous peoples, even in the economic sphere, does not constitute discrimination.

15. Operative paragraph 30. The explicit inclusion of the exercise of some participatory rights across borders could still be discussed with a view to achieving a solution acceptable to most.

16. Operative paragraph 36. The article on special protection in periods of armed conflict is highly commendable and corresponds to the traditional experiences of the Samis.

17. Operative paragraph 38. The placing of the article is somewhat confusing. The issue of relocation could more appropriately be dealt with in connection with land rights (part III).

MEXICO

[Original: Spanish]
[2 June 1993]

1. The Government of Mexico considers that the draft universal declaration on the rights of indigenous peoples generally meets the aspirations and demands of the Mexican indigenous peoples.

2. The rights of indigenous peoples must be protected with full respect for their cultural identities, without expecting them to abandon their cultures in order to improve their level of living. It is the will of these peoples to remain indigenous and they claim the right to cultural difference; there is no question of granting them exceptional treatment but, rather, of giving them equal treatment.

3. It is important to specify that the right mentioned in this draft for the indigenous peoples to determine freely their relations with States does not imply any secession or separatism with respect to the decisions of the national State. In this sense, it is stressed that the indigenous question is not a marginal issue among the nation's problems and that it constitutes an integral part of the national situation.

4. Nor is there any intention to extend special treatment to these peoples, while recognizing that indigenous groups have their own characteristics, it is necessary to create mechanisms and means of access to enable these groups to accede to the development process in their own countries in the same manner as the population as a whole.

5. In this context, there is one aspect which should form an integral part of the declaration, namely the recognition of the right of indigenous peoples to participate in the formulation of development strategies by means of the integrated efforts of Governments and the indigenous populations themselves.

6. Although the draft urges States to influence and apply effectively all the international instruments which refer to the indigenous peoples, it fails to make an appeal to the international community to accede to and ratify, as the case may be, the international instruments in question. Such is the case of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, bearing in mind the high proportion of indigenous Mexicans who have to work abroad.

7. It must be pointed out that the expansion and strengthening of international legislation with the help of the views of the indigenous persons themselves will contribute to securing legislation at the national level which embodies the fundamental rights of the indigenous peoples and at the same time will assist in improving the conditions which currently afflict that population.

8. Lastly, the Government of Mexico expresses its appreciation for the work performed by the Working Group in formulating the declaration and hopes that it will be completed shortly. In addition, it points out the desirability of creating means and mechanisms to enable these groups to have their own area of expression and decision-making within the United Nations system.